

1 LOIS J. SCHIFFER
Assistant Attorney General
2 Environment & Natural Resources Division
United States Department of Justice

3 ADAM M. KUSHNER
4 WILLIAM A. WEINISCHKE
KATHRYN SCHMIDT
5 STEVEN O'ROURKE
JON A. MUELLER
6 PHILLIP A. BROOKS
Environmental Enforcement Section
7 Environment & Natural Resources Division
United States Department of Justice
8 P.O. Box 7611
Washington, D.C. 20044
9 Telephone: (202) 514-4046

10 NORA M. MANELLA
United States Attorney
11 LEON W. WEIDMAN
Assistant United States Attorney
12 Chief, Civil Division
KURT ZIMMERMAN
13 Assistant United States Attorney
Federal Building
14 300 North Los Angeles Street
Los Angeles, California 90012
15 Telephone: (213) 894-2408

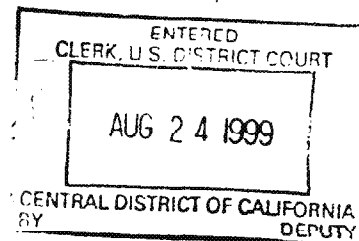
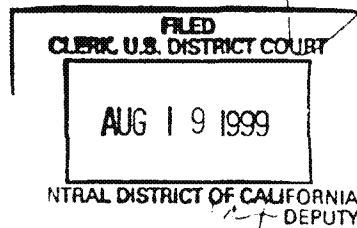
16 Attorneys for Plaintiff United States of America
17 (See next page for names of additional counsel.)

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

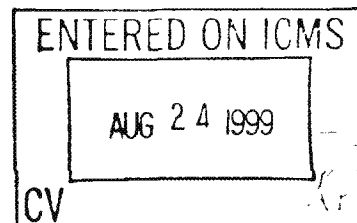
20 UNITED STATES OF AMERICA and) NO. CV 90-3122-AAH (JRx)
STATE OF CALIFORNIA,)
21) AMENDED
Plaintiffs,) CONSENT DECREE
22)
v.)
23)
MONTROSE CHEMICAL CORPORATION)
24 OF CALIFORNIA, et al.,)
25)
Defendants.)
26)
27 AND RELATED COUNTER, CROSS,
AND THIRD PARTY ACTIONS.

28 Docketed

Mid copy Prys
Mid Notice Prys
JS-6



THIS DOCUMENT IS THE PROPERTY OF THE COURT
AS REQUIRED BY RULE 77(d)



AUG 24 1999

1 DANIEL E. LUNGREN
Attorney General of the State of California
2
JAN S. STEVENS
3 CHARLES GETZ
Assistant Attorneys General
4
JOHN A. SAURENMAN
5 CLARA L. SLIFKIN
BRIAN W. HEMBACHER
6 Deputy Attorney General
300 South Spring Street
7 Los Angeles, California 90013
Telephone: (213) 897-2702; (213) 897-9442
8
SARA J. RUSSELL
9 Deputy Attorney General
2101 Webster Street
10 Oakland, California 94612
Telephone: (510) 286-0845
11
Attorneys for Plaintiff State of California
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Response, Compensation, and Liability Act of 1980, as amended
2 ("CERCLA"), 42 U.S.C. § 9607, seeking, inter alia, recovery for
3 damages, including damage assessment costs and related response
4 costs, for injury to, destruction of, and loss of natural resources
5 resulting from releases of hazardous substances, specifically
6 including dichlorodiphenyltrichloroethane and its metabolites
7 (hereafter collectively "DDT"), and polychlorinated biphenyls
8 (hereafter "PCBs"), from facilities in and around Los Angeles,
9 California, into the environment, including the area defined herein
10 as the Montrose Natural Resource Damages Area (the "Montrose NRD
11 Area"), and for response costs incurred and to be incurred by EPA
12 in connection with releases of hazardous substances into the
13 environment from the Montrose Chemical Corporation site located at
14 20201 South Normandie Avenue, Los Angeles, California. The
15 original complaint was amended on June 28, 1990, and again on
16 August 16, 1991 ("Second Amended Complaint" or "Complaint").
17 Defendant LACSD filed its answer to the Complaint and counterclaims
18 against the United States and the State on September 30, 1991.

19 In the First Claim for Relief of the Complaint, plaintiffs
20 asserted a claim against ten defendants, including LACSD, under
21 Section 107(a)(1-4)(C) of CERCLA, 42 U.S.C. § 9607(a)(1-4)(C), for
22 the alleged natural resource damages, including damage assessment
23 costs and related response costs. In the Second Claim for Relief
24 of the Complaint, the United States asserts a claim for recovery of
25 costs incurred and to be incurred by EPA in response to the release
26 or threatened release of hazardous substances into the environment
27 at the Montrose NPL Site, as described in the Complaint, pursuant
28 to Section 107(a)(1-4)(A) of CERCLA, 42 U.S.C. § 9607(a)(1-4)(A).

1 The Second Claim for Relief, brought at the request of and on
2 behalf of EPA, does not allege liability on the part of any of the
3 Settling Local Governmental Entities.

4 EPA is the lead agency with regard to the conduct of response
5 activities at the Montrose NPL Site. The State, through its
6 support agencies DTSC and the Regional Board, also participates in
7 Montrose NPL Site response activities consistent with Subpart F of
8 CERCLA's National Contingency Plan, 40 C.F.R. §§ 300.500 - 300.525.
9 While the State has not filed a claim in the instant action to
10 recover response costs incurred and to be incurred at the Montrose
11 NPL Site, DTSC and the Regional Board have incurred response costs
12 in connection with the Montrose NPL Site.

13 The Montrose NPL Site was placed on the National Priorities
14 List of Superfund Sites in October 1989. CERCLA and the National
15 Contingency Plan ("NCP") require that a site investigation gather
16 the data necessary to assess the threat to human health and the
17 environment of actual or threatened releases of hazardous
18 substances from a facility, to include any place where a hazardous
19 substance has come to be located. Consistent with those
20 requirements, EPA's continuing investigation of the Montrose NPL
21 Site indicates that the Montrose NPL site is contaminated
22 significantly by DDT and other hazardous substances released during
23 the manufacture of DDT, with DDT and those other hazardous
24 substances present at the Montrose NPL Site in soil, groundwater,
25 stormwater channel sediments, and sediments in portions of LACSD's
26 Joint Outfall ("J.O.") "D" and District 5 Interceptor sewer lines.
27 As a result of the ongoing investigation of the Montrose NPL Site,
28 a series of response activities is currently underway, including a

1 remedial investigation and a feasibility study ("RI/FS") of the DDT
2 contaminated soil and groundwater underlying the Montrose DDT Plant
3 Property and surrounding areas of the Montrose NPL Site, the
4 conduct of a time-critical removal action at the Montrose NPL Site
5 to investigate and remove Montrose DDT from soil in residential
6 areas within four blocks of the Montrose DDT Plant Property, the
7 conduct of an Engineering Evaluation and Cost Analysis ("EE/CA") to
8 investigate the aerial fallout of DDT dust emitted from the former
9 Montrose DDT plant on residential and commercial areas in close
10 proximity to the Montrose DDT Plant Property, and the conduct of a
11 removal action to remove DDT contaminated sediments from the J.O.
12 "D" sewer adjacent to and downstream of the Montrose DDT Plant
13 Property.

14 In addition, as a result of information developed and
15 assembled, inter alia, in connection with the Trustees' damage
16 assessment relating to DDT and PCB contamination of the offshore
17 area alleged in the First Claim for Relief in this action, EPA has
18 extended its Montrose NPL Site investigation to include that
19 portion of the Montrose NRD Area comprised of the offshore area
20 contaminated by DDT and PCBs released into the LACSD sewer lines
21 and subsequently deposited in the sediments of the Palcs Verdes
22 shelf near the White's Point Outfall. EPA has not, however,
23 extended its investigation of the Montrose NPL Site to include the
24 Los Angeles and the Long Beach Harbors (other than the Consolidated
25 Slip in Los Angeles Harbor).

26 Certain of the defendants filed cross-complaints and third
27 party complaints alleging that some or all of the Settling Local
28 Governmental Entities named in Attachment A are also liable for

1 damages and response costs related to the alleged natural resource
2 injuries associated with the Montrose NRD Area and for response
3 costs at the Montrose NPL Site. The bases for liability on the
4 part of the Settling Local Governmental Entities as alleged in the
5 cross-complaints and third party complaints relate primarily to the
6 involvement of those entities in the provision of public services
7 such as the collection, conveyance, treatment, and disposal of
8 wastewater and disposal of residuals; collection and conveyance of
9 stormwater runoff; ownership and operation of portions of the
10 contaminated facilities, including portions of the Montrose NPL
11 Site; and pest and vector control; and their alleged involvement as
12 arrangers for transport, disposal or treatment and/or as
13 transporters of hazardous substances; and their alleged involvement
14 as owner/operators of facilities where hazardous substances have
15 been treated or disposed. These claims have been brought under
16 federal and state law.

17 The federal law claims, brought under CERCLA, are based in
18 part on the Settling Local Governmental Entities' alleged
19 involvement as present and past owners and/or operators of
20 facilities at which hazardous substances were disposed by the
21 generator defendants, as persons who arranged for transport,
22 disposal or treatment of hazardous substances, and as persons who
23 accepted hazardous substances for transport to disposal or
24 treatment facilities. As alleged in the cross-complaints and the
25 third party complaints, the state law claims, brought under
26 statutory and common law, are based in part on the Settling Local
27 Governmental Entities' alleged statutory and common law
28 responsibilities, alleged involvement in releases of various

1 substances, their relationship to other dischargers, and their
2 alleged responsibility for contamination and conditions in the
3 contaminated areas, including the Montrose NPL Site. A broad range
4 of relief is sought in the cross-complaints and third party
5 complaints, including costs incurred and to be incurred and
6 damages, including natural resource damages relating to the
7 allegations in the First Claim for Relief and to the Montrose NPL
8 Site.

9 Subsequent to the filing of this action, plaintiffs and the
10 Settling Local Governmental Entities entered into settlement
11 negotiations under the supervision of Special Master Harry V.
12 Peetris pursuant to Pretrial Order No. 1, dated March 18, 1991.
13 Those negotiations occurred over the ensuing seventeen month period
14 and resulted in a consent decree that resolved the liability of all
15 of those entities to plaintiffs for natural resource damages and
16 for response costs at the Montrose NPL Site as defined in the
17 consent decree approved by the District Court on April 26, 1993
18 (the "1993 Decree"). The District Court approved the 1993 Decree
19 without the Special Master having informed the District Court of
20 the total amount of damages being sought by the Trustees in order
21 to avoid the impairment of the ongoing settlement negotiations with
22 the non-settling defendants.

23 At the time of the settlement negotiations concerning the 1993
24 Decree, the signatories to the 1993 Decree (including these
25 Settling Local Governmental Entities) and the other defendants were
26 aware that in addition to response activities undertaken under
27 CERCLA at the Montrose NPL Site, EPA had conducted a preliminary
28 evaluation under CERCLA of contamination in the Santa Monica Bay

1 (hereafter referred to as "the Santa Monica Bay CERCLIS Site"),
2 which included an evaluation of portions of the Palos Verdes shelf.
3 The signatories to the 1993 Decree further understood that on
4 September 17, 1990, after the filing of this action, EPA determined
5 that it would conduct no further investigation or response
6 activities under CERCLA regarding the Santa Monica Bay CERCLIS
7 Site. The signatories to the 1993 Decree understood that EPA's "no
8 further action" determination was subject to reconsideration by
9 EPA, and that nothing in the 1993 Decree was intended to affect the
10 authority or jurisdiction of EPA to take further action. Moreover,
11 the 1993 Decree specifically reserved the authority of EPA to take
12 further action. The signatories to the 1993 Decree also understood
13 that DDT contamination on the Palos Verdes shelf was excluded from
14 EPA's preliminary evaluation of the Santa Monica Bay CERCLIS Site
15 and was deferred for possible future evaluation as part of the
16 Montrose NPL Site in the event that EPA decided to extend the
17 Montrose NPL Site investigation to the Palos Verdes shelf, which
18 EPA has now done.

19 In addition, the signatories to the 1993 Decree understood at
20 the time of the negotiation of the 1993 Decree that EPA's
21 investigation of the Montrose NPL Site was continuing. At that
22 time, the signatories to the 1993 Decree understood that the
23 Montrose NPL Site investigation included the LACSD J.O. "D" and
24 District 5 Interceptor sewer lines, but that the investigation had
25 not extended to the Palos Verdes shelf. The signatories to the
26 1993 Decree further understood that the Montrose NPL Site
27 investigation included the stormwater pathway from the former
28 Montrose DDT Plant Property downstream to the Consolidated Slip,

1 but not beyond. The signatories to the 1993 Decree also understood
2 that the geographical extent of the Montrose NPL Site investigation
3 was subject to continued re-evaluation by EPA in the course of the
4 continued investigation, and the signatories to the 1993 Decree
5 agreed that nothing in the 1993 Decree was intended to affect the
6 authority or the jurisdiction of EPA to extend the Montrose NPL
7 Site investigation or to take other response activities with
8 respect to the Palos Verdes shelf, and accordingly the 1993 Decree
9 specifically reserved the authority of EPA to take such response
10 activities.

11 The terms of the 1993 Decree were based on, inter alia,
12 plaintiffs' evaluation of factors including, but not limited to,
13 the nature and extent of the Settling Local Governmental Entities'
14 involvement in causing the alleged contamination; these entities'
15 past efforts to control and address the sources of such
16 contamination; the alleged natural resource damages and estimated
17 cost of restoration activities on the Palos Verdes shelf portion of
18 the Montrose NRD Area, including possible capping, dredging, and
19 treatment of contaminated sediments, and replacement or acquisition
20 of equivalent resources; the contamination at the Montrose NPL Site
21 and estimated cost of response activities at relevant areas of the
22 Montrose NPL Site; past and ongoing efforts of others such as
23 Montrose, in studying contamination at the Montrose NPL Site; and
24 the Settling Local Governmental Entities' cooperation in resolving
25 their liability at a relatively early stage of this litigation.

26 Pursuant to the terms of the 1993 Decree, the Settling Local
27 Governmental Entities agreed to make payments of \$42,200,000 for
28 natural resource damages and \$3,500,000 for response costs. To

1 date, in accordance with the terms and conditions of the 1993
2 Decree, the Settling Local Governmental Entities have made payments
3 for damages to natural resources and for response costs into escrow
4 accounts established and maintained by LACSD and the City of Los
5 Angeles, respectively, pursuant to the terms and conditions of the
6 1993 Decree. Under the terms and conditions of the 1993 Decree,
7 the Settling Local Governmental Entities have paid into the escrow
8 account maintained by LACSD the following funds for natural
9 resource damages: i) \$1,500,000 pursuant to Paragraph 8.A of the
10 1993 Decree; ii) \$7,800,000 pursuant to Paragraph 8.B of the 1993
11 Decree; and iii) \$10,000,000, \$9,000,000, and \$8,000,000 in three
12 payments made pursuant to Paragraph 10.A of the 1993 Decree. In
13 addition, under the terms and conditions of the 1993 Decree, the
14 Settling Local Governmental Entities have paid into the escrow
15 account maintained by the City of Los Angeles the total amount of
16 \$3,500,000 for response costs pursuant to the terms of Paragraph
17 17.A of the 1993 Decree.

18 On March 21, 1995, the Ninth Circuit Court of Appeals reversed
19 the decision of the District Court approving and entering the 1993
20 Decree, and remanded the cause to the District Court to determine,
21 in light of further information provided by plaintiffs, "the
22 proportional relationship between the \$45.7 million to be paid by
23 the settling defendants and the governments' current estimate of
24 total potential damages" and "to evaluate the fairness of that
25 proportional relationship in light of the degree of liability
26 attributed to the settling defendants," and in light of the
27 numerous "other relevant factors" properly considered in the
28 evaluation of a settlement of this type.

1 On March 22, 1995, the District Court ruled on pre-trial
2 motions previously made by the Montrose-affiliated Defendants and
3 defendant Westinghouse Electric Corporation ("Westinghouse"),
4 holding that the collective liability of the Montrose-affiliated
5 Defendants under the First Claim for Relief is limited to the total
6 of all response costs plus a maximum of \$50,000,000 for natural
7 resource damages, and that plaintiffs have the burden of proving
8 that any pre-1980 damages for which plaintiffs seek recovery are
9 indivisible from post-1980 damages. The District Court further
10 ruled that the First Claim for Relief is barred by the applicable
11 statute of limitations and ordered the dismissal of that First
12 Claim as against the Montrose-affiliated Defendants and
13 Westinghouse. The District Court subsequently certified its
14 rulings on the \$50,000,000 limitation on damages and on the statute
15 of limitations for interlocutory appeal under 28 U.S.C. § 1292(b).
16 The Court of Appeals thereafter accepted plaintiffs' petitions for
17 appeal of those rulings, and those appeals are presently pending
18 and unresolved.

19 Notwithstanding the March 21st decision of the Court of
20 Appeals and the March 22nd rulings of the District Court, the
21 Parties hereto remain desirous of resolving all of the contingent
22 liability of the Settling Local Governmental Entities to
23 plaintiffs, DTSC, and the Regional Board with respect to the
24 natural resource damages relating to the Montrose NRD Area and
25 response costs relating to the Montrose NPL Site.

26 In pursuing such resolution of liability, plaintiffs, DTSC,
27 the Regional Board, and the Settling Local Governmental Entities
28 seek to revise and to amend the 1993 Decree to take account of

1 developments occurring since the District Court's initial approval
2 of the 1993 Decree. Under the direct supervision of the Special
3 Master, the Parties have reached agreement on the Amended Decree
4 that includes covenants not to sue by the Trustees for natural
5 resource damages for the Montrose NRD Area, and by EPA, DTSC, and
6 the Regional Board for response costs for the Montrose NPL Site,
7 including the offshore areas. In addition, the Settling Local
8 Governmental Entities are provided contribution protection. The
9 basis for this amended agreement is set forth below.

10 The Parties have considered again each of the factors,
11 enumerated above, that were considered by them in connection with
12 the settlement reflected by the 1993 Decree. Additionally, the
13 Parties and the Special Master have considered each of the relevant
14 later developments, including the guidance provided by the Ninth
15 Circuit Court of Appeals in United States v. Montrose Chemical
16 Corp., 50 F.3d 741 (9th Cir. 1995), the Trustees' estimates of
17 resource restoration costs and the value of interim lost use of
18 resources as reported in the Fall of 1994, EPA's announcement on
19 July 10, 1996, regarding its projected response activities at the
20 Montrose NPL Site and related adjustments to the Trustees'
21 estimated resource restoration costs and interim lost use claim,
22 plaintiffs' estimate of the potential costs of EPA response action,
23 and an appropriate evaluation in order to estimate costs and
24 damages for settlement purposes for all parties.

25 As a result, the Parties have determined an appropriate
26 settlement amount, which is set forth in this Amended Decree, based
27 on, inter alia, current estimates of total potential costs and
28 damages. In determining the settlement amount, the Parties have

1 considered the proportional relationship between the amount to be
2 paid by the Settling Local Governmental Entities and a current
3 estimate of total potential costs and damages based on a scenario
4 that reasonably may be used to estimate costs and damages for
5 settlement purposes. In assessing the proportional relationship,
6 EPA and the Trustees have considered the relative roles of both the
7 Settling Local Governmental Entities and the generator defendants
8 in creating the conditions that gave rise to EPA's claim for
9 response costs and the Trustees' claim for assessment costs and
10 damages.

11 Plaintiffs' determination of the appropriateness of the
12 settlement amount to be paid by the Settling Local Governmental
13 Entities necessarily considers the fact that the Settling Local
14 Governmental Entities are situated in a manner that is
15 fundamentally different from the generator defendants vis-a-vis the
16 plaintiffs' claims for costs and damages.

17 First, the generator defendants are the sources of the problem
18 that is the subject of EPA's response activities and the Trustees'
19 restoration program. Plaintiffs' allegations specifically concern
20 the effects of DDT and PCBs. The Montrose-affiliated Defendants
21 (i.e., the DDT defendants) are primarily responsible for the DDT
22 contamination on the Palos Verdes shelf. The PCB defendants were
23 major sources of PCBs. In contrast, the roles of the Settling
24 Local Governmental Entities were substantially different. In
25 general, they were passive conduits of wastewater and stormwater.
26 Thus, any flows of DDT and PCBs that passed through collection
27 system(s) and ocean outfall(s) owned and/or operated by the various
28 Settling Local Governmental Entities to the Palos Verdes shelf are

1 far less significant to plaintiffs' assessment of relative
2 contribution to plaintiffs' claims for costs and damages.
3 Moreover, the volumes of wastewater and stormwater that flowed
4 through collection system(s) and ocean outfall(s) owned and/or
5 operated by the various Settling Local Governmental Entities is not
6 highly significant to plaintiffs' assessment of relative
7 contribution because it is the DDT and PCBs in the wastewater
8 and/or stormwater that gave rise to this action and not the effects
9 of wastewater or stormwater flow in general.

10 Second, the amounts of DDT and PCBs discharged by the
11 generator defendants were substantial. In United States v.
12 Montrose Chemical Corp., 793 F. Supp. 237, 240-241 (C.D. Cal.
13 1992), this Court considered the respective contributions of
14 contaminants to the Palos Verdes shelf of each group of generator
15 defendants and determined that the plaintiffs' settlement
16 methodology was reasonable. The plaintiffs believe that in view of
17 currently available information, the estimates of the contributions
18 of the generator defendants recited in the Court's opinion continue
19 to be reasonable. The Montrose-affiliated Defendants are
20 responsible for the discharge of approximately 5.5 million pounds
21 of DDT, Westinghouse is responsible for the discharge of
22 approximately 38,000 pounds of PCBs, and settling defendants
23 Potlatch Corporation and Simpson Paper Company are responsible for
24 the discharge of approximately 4,500 pounds of PCBs.

25 Third, the Settling Local Governmental Entities were largely
26 if not completely unaware of the discharge of DDT in the wastewater
27 from the Montrose DDT plant, the runoff of DDT contaminated
28 stormwater from the Montrose DDT Plant Property to the Los Angeles

1 Harbor, or the massive ocean dumping by Montrose of its DDT waste
2 until well after the vast amount of DDT had been discharged by the
3 DDT defendants.

4 Fourth, because the Settling Local Governmental Entities were
5 and are not-for-profit public entities obligated to provide
6 essential public services through the operation of sewer systems
7 and stormwater channels, they are unlike the generator defendants
8 that discharged the DDT and PCBs at issue as part of for-profit
9 enterprises.

10 Fifth, the Settling Local Governmental Entities, in particular
11 LACSD, undertook significant actions to halt the discharge of DDT
12 and PCBs from the Montrose DDT Plant Property, the Westinghouse
13 plant and the Potlatch/Simpson plant. Those actions began with
14 LACSD's early efforts to monitor discharges from its outfalls,
15 efforts to identify the source of DDT that was identified in the
16 effluent, efforts to curtail the Montrose DDT discharge as early as
17 1969, and subsequent efforts to identify and curtail industrial
18 sources of PCBs. LACSD's efforts resulted in large reductions in
19 the amounts of those contaminants in the discharge from the
20 outfalls involved herein, including a massive decline in DDT
21 discharge from the White's Point Outfall after the Montrose DDT
22 Plant Property ceased discharging its process waste to the LACSD
23 sewer. In addition, LACSD has engaged in substantial monitoring on
24 the Palos Verdes shelf and the results of the LACSD monitoring were
25 made available to, and used by, the Trustees to better understand
26 the conditions currently existing on the Palos Verdes shelf.

27 Sixth, the stormwater channels and outfalls owned and/or
28 operated by Settling Local Governmental Entities, other than

1 LACSD's White's Point Outfall, and other activities by Settling
2 Local Governmental Entities are believed to have contributed far
3 lower quantities of DDT and PCBs to the area which is the subject
4 of this action (to the extent that they contributed any DDT or
5 PCBs). In addition, those contributions, if any, are understood to
6 be in areas with a less direct relationship to the areas which are
7 the subject of the plaintiffs' claims.

8 Seventh, the Montrose-affiliated Defendants, as the owners and
9 operators of the plant at which the DDT was manufactured and from
10 which the DDT was released into the environment, not the Settling
11 Local Governmental Entities, bear the overwhelming responsibility
12 for the DDT contamination of the groundwater and soil underlying
13 the Montrose DDT Plant Property, the stormwater channels (including
14 the Kenwood Drain, the Torrance Lateral, and the Dominguez Channel)
15 and the Consolidated Slip, the LACSD sewers, and nearby
16 neighborhoods. Of the Settling Local Governmental Entities only
17 LACSD, the County of Los Angeles, and the City of Los Angeles, as
18 the owners of the sewers, the stormwater channels, and public
19 rights-of-way that are contaminated with Montrose DDT waste, can
20 conceivably have any "factual responsibility" for the cleanup of
21 DDT and other hazardous substances released or dumped by the
22 Montrose-affiliated Defendants, and their responsibility is minimal
23 when compared with that of the Montrose-affiliated Defendants who
24 are responsible for manufacturing and formulating the DDT and
25 releasing it into the environment including the sewers, the
26 stormwater channels and the public rights-of-way.

27 Eighth, the Settling Local Governmental Entities continue to
28 cooperate with plaintiffs in resolving their potential liability

1 relatively early in the suit, and without contested litigation. By
2 agreeing to payment of the settlement amount, the Settling Local
3 Governmental Entities have assumed both the risk that such amount
4 might later prove to be an overestimate and the possibility that
5 such total amount might later prove to have been underestimated.
6 Additionally, plaintiffs have considered of particular significance
7 the continued high degree of cooperation of the Settling Local
8 Governmental Entities with plaintiffs as evidenced by their
9 continued willingness to resolve this lengthy action without
10 further litigation or trial, despite rulings of the District Court
11 that, if affirmed by the Court of Appeals, would have serious
12 adverse effect upon plaintiffs' positions herein.

13 The Parties further recognize that the District Court's
14 rulings of March 22, 1995, as they presently stand, both bar and
15 preclude any recovery of damages under the First Claim for Relief
16 and limit the potential amount of such recovery if recovery is not
17 totally barred and precluded. Further, the fact that plaintiffs
18 now have the burden of proving that any pre-1980 damages for which
19 plaintiffs seek recovery are indivisible from post-1980 damages
20 also may limit plaintiffs' ability to recover all damages alleged
21 under the First Claim for Relief.

22 In estimating possible damages and costs for settlement
23 purposes, the Parties recognize that control of the contaminated
24 offshore sediments through response activities by EPA on the Palos
25 Verdes shelf more than likely will be based upon an evaluation of
26 similar approaches, involving similar types of costs, and achieving
27 similar results, as would have been obtained through physical
28 restoration by the Trustees of those same offshore areas of the

1 Montrose NRD Area had that action been taken by the Trustees,
2 except that EPA has greater statutory and administrative
3 flexibility in the manner in which it undertakes response
4 activities. The plaintiffs believe that EPA's flexibility will
5 result in the incurrence of lower expenses for physical activities
6 that are similar to those that the Trustees evaluated. Thus, the
7 Trustees' 1994 estimate for physical restoration activity is not
8 believed to reflect the actual costs to EPA of a response action on
9 the Palos Verdes shelf and the Trustees' estimates may in fact
10 exceed the actual costs of the EPA response action.

11 Based on the above-recited considerations, and without
12 limiting the Governments' position at trial, the Governments'
13 current estimate of total damages and costs for settlement purposes
14 is between \$225 million and \$250 million. For the purposes of
15 settlement, the payment of \$45.7 million by the Settling Local
16 Governmental Entities under this Amended Decree is reasonable. It
17 reflects a proportion of about one-fifth to be paid by the Settling
18 Local Governmental Entities, which is more than reasonable given
19 their limited role, as set forth above, and their cooperation in
20 settlement.

21 The United States and the State also have agreed on the
22 application of the settlement funds between EPA/DTSC response costs
23 relating to the Montrose NPL Site (as defined herein to include the
24 effluent-affected sediments on the Palos Verdes shelf) and the
25 Trustees' damage assessment costs and natural resource damages
26 relating to the Montrose NRD Area. The United States and the State
27 have agreed that the Settling Local Governmental Entities should
28 pay a total of \$23,700,000 to the Trustees for natural resource

1 damages and costs which amounts to approximately one-fifth of the
2 Trustees' total damages and costs as estimated for settlement
3 purposes. Similarly, the United States and the State have agreed
4 that the Settling Local Governmental Entities should pay a total of
5 \$22,000,000 to EPA and DTSC for response costs which also amounts
6 to approximately one-fifth of EPA's and DTSC's total response costs
7 as estimated for settlement purposes.

8 In determining the settlement amount paid for EPA/DTSC
9 response costs and for the Trustees' damage assessment costs and
10 natural resource damages, the United States and the State have
11 considered the current estimates of potential costs and damages and
12 the proportional relationship between the amount to be paid in
13 settlement and potential costs and damages, and the court decisions
14 noted above. In addition, the United States and the State have
15 considered the total amount of available settlement funds, the
16 expenses incurred by the Trustees in connection with the
17 characterization of the effluent-affected DDT and PCB contaminated
18 sediment deposit on the Palos Verdes shelf and the assessment of
19 the contaminated sediments on the environment and the usefulness of
20 much of their work to EPA; EPA's current estimate of the expenses
21 associated with initiating response activity on the Palos Verdes
22 shelf; the Trustees' current estimates of the funds required to
23 initiate scoping studies with respect to the planning of biological
24 restoration programs designed to aid in the recovery of injured
25 trust resources; and the availability of funds from the settlement
26 with Potlatch Corporation and Simpson Paper Company.

27 All claims against the Settling Local Governmental Entities,
28 including claims for costs, damages, contribution, and other

1 claims, are addressed and covered by this Amended Decree. This
2 Amended Decree resolves the Settling Local Governmental Entities'
3 liability to the United States, on behalf of the Federal Trustees,
4 and the State, on behalf of the State Trustees, for natural
5 resource damages alleged in the Complaint with respect to the
6 Montrose NRD Area, and liability to the United States and the State
7 for response costs incurred and to be incurred in connection with
8 the Montrose NPL Site, as defined herein, and provides contribution
9 protection to the Settling Local Governmental Entities for all
10 matters addressed herein. Except where otherwise specifically
11 stated, this Amended Decree is intended to cover all past and
12 future response cost claims which the United States and the State
13 (through its authorized agencies) may have with respect to the
14 Montrose NPL Site against the Settling Local Governmental Entities.

15 This settlement is made in good faith after arms-length
16 negotiations conducted under the supervision of Special Master
17 Harry V. Peetris pursuant to Pretrial Order No. 1. Entry of this
18 Amended Decree is the most appropriate means to resolve the matters
19 covered herein and is fair, reasonable and in the public interest.

20 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

21 JURISDICTION AND VENUE

22 1. For purposes of entry and enforcement of this Amended
23 Decree only, the Parties to this Amended Decree agree that the
24 Court has personal jurisdiction over the Parties and has
25 jurisdiction over the subject matter of this action and the Parties
26 to this Amended Decree pursuant to 28 U.S.C. §§ 1331, 1345, and
27 1367, and Sections 106, 107, and 113(b) of CERCLA, 42 U.S.C.
28 §§ 9606, 9607, and 9613(b), and the principles of supplemental

1 jurisdiction. Solely for the purposes of this Amended Decree, the
2 Parties waive all objections and defenses that they may have to
3 jurisdiction of the Court or to venue in this District and to
4 service of process. Nothing herein shall constitute: an admission
5 or a finding that this Court has jurisdiction over the cross-claims
6 or third party complaints against the Settling Local Governmental
7 Entities or over any counterclaims against plaintiffs; an admission
8 or finding that any counterclaim, cross-claim or third party
9 complaint states a claim upon which relief may be granted; or a
10 waiver of any defenses to any such counterclaim, cross-claim or
11 third party complaint.

12 SETTLING LOCAL GOVERNMENTAL ENTITIES

13 2. The Settling Local Governmental Entities that are Parties
14 to this Amended Decree are listed in Attachment A to this Amended
15 Decree and for purposes of implementing Paragraphs 8 through 12
16 herein are further delineated in Attachment B to this Amended
17 Decree as the Category I entities (i.e., LACSD and the various
18 other county sanitation districts of Los Angeles County) and the
19 Category II entities (i.e., the other Settling Local Governmental
20 Entities).

21 APPLICABILITY OF AMENDED DECREE

22 3. The provisions of this Amended Decree, including the
23 covenants not to sue and contribution protection, shall be binding
24 on, apply to, and inure to the benefit of the United States and the
25 State, and to the Settling Local Governmental Entities and their
26 agencies and departments, including those that may be sued
27 independently, both proprietary and non-proprietary, and including
28 their past, present and future officials, directors, employees,

1 predecessors, successors and assigns. No change in the ownership
2 or organizational form or status of any Settling Local Governmental
3 Entity shall affect its rights or obligations under this Amended
4 Decree.

5 EFFECT OF SETTLEMENT/ENTRY OF JUDGMENT

6 4. This Amended Decree was negotiated and executed by the
7 Parties hereto in good faith at arms-length to avoid the
8 continuation of expensive and protracted litigation and is a fair
9 and equitable settlement of claims which were vigorously contested.
10 The execution of this Amended Decree is not, and shall not
11 constitute or be construed as, an admission of liability by any of
12 the Parties to this Amended Decree, nor is it an admission or
13 denial of any of the factual allegations set out in the Complaint,
14 counterclaims, cross-claims, or third party complaints, or an
15 admission of violation of any law, rule, regulation, or policy by
16 any of the Parties to this Amended Decree. Nothing in this Amended
17 Decree is intended to affect the authority or jurisdiction of EPA
18 to take action beyond the boundaries of the Montrose NPL Site.

19 5. Upon approval and entry of this Amended Decree by the
20 Court, this Amended Decree shall constitute a final judgment
21 between and among the United States and the State, and the Settling
22 Local Governmental Entities.

23 DEFINITIONS

24 6. This Amended Decree incorporates the definitions set
25 forth in Section 101 of CERCLA, 42 U.S.C. § 9601. In addition,
26 whenever the following terms are used in this Amended Decree, they
27 shall have the following meanings:

28 A. "Damage Assessment Costs" shall mean all costs associated

1 with the planning, design, implementation and oversight of the
2 Trustees' damage assessment process, which addresses the fact,
3 extent and quantification of the injury to, destruction of or loss
4 of natural resources and the services provided by these resources
5 resulting from releases of hazardous substances alleged in the
6 First Claim for Relief in the Complaint, and with the planning of
7 restoration or replacement of such natural resources and the
8 services provided by those resources, or the planning of the
9 acquisition of equivalent resources or services, and any other
10 costs necessary to carry out the Trustees' responsibilities with
11 respect to those natural resources, including all related
12 enforcement costs.

13 B. "Date of Execution of the 1993 Decree" shall mean
14 November 2, 1992, which is the date by which the 1993 Decree was
15 signed by all of the following: the authorized representatives of
16 each of the Settling Local Governmental Entities, of the State, and
17 of the EPA, and by the Assistant Attorney General of the
18 Environment and Natural Resources Division of the United States
19 Department of Justice.

20 C. "Date of Execution of this Amended Decree" shall mean the
21 date by which this Amended Decree has been signed by all of the
22 following: the authorized representatives of each of the Settling
23 Local Governmental Entities, of the State, and of the EPA, and by
24 the Assistant Attorney General of the Environment and Natural
25 Resources Division of the United States Department of Justice.

26 D. "Date of Initial Approval of this Amended Decree" shall
27 mean the date on which this Amended Decree has been initially
28 approved and signed by the United States District Court.

1 E. "Date of Final Approval of this Amended Decree" shall
2 mean the later of (1) the date on which the District Court has
3 approved and entered this Amended Decree as a judgment and all
4 applicable appeal periods have expired without an appeal being
5 filed, or (2) if an appeal is taken, the date on which the District
6 Court's judgment is affirmed and there is no further right to
7 appellate review.

8 F. "Joint Outfall System" shall mean that wastewater
9 collection, treatment and disposal facility of certain county
10 sanitation districts of Los Angeles County discharging effluent
11 through the White's Point Outfall and consisting of the Joint Water
12 Pollution Control Plant and the associated sewers, pumping plants,
13 inland water reclamation plants, treatment plants, treatment plant
14 outfall sewers and incidental sanitation works operated pursuant to
15 the 1995 Amended Joint Outfall Agreement by LACSD and as defined
16 therein, including subsequent modifications to that system, as
17 contemplated by that agreement.

18 G. "Montrose-affiliated Defendants" shall mean,
19 collectively, the Montrose Chemical Corporation of California
20 ("Montrose"), Chris-Craft Industries, Inc. ("Chris-Craft"), Rhone-
21 Poulenc Basic Chemicals Co. ("Rhone-Poulenc") now a division of
22 Rhone-Poulenc, Inc., Atkemix Thirty-Seven, Inc. ("Atkemix"),
23 Stauffer Management Company, and ZENECA Holdings Inc. formerly
24 known as ICI American Holdings, Inc. ("ICI").

25 H. "Montrose DDT Plant Property" shall mean for purposes of
26 this Amended Decree the thirteen (13) acre parcel at 20201 South
27 Normandie Ave., Los Angeles, California 90044, which is the site of
28 Montrose Chemical Corporation of California's former DDT production

1 and formulation plant. The Montrose DDT Plant Property is part of
2 the Montrose NPL Site.

3 I. "Montrose NPL Site" for purposes of this Amended Decree,
4 includes, but is not limited to, the Montrose DDT Plant Property;
5 the real property located at 1401 West Del Amo Boulevard, Los
6 Angeles, California and owned by Jones Chemicals, Inc.; those
7 portions of the Normandie Avenue Ditch adjacent to and south of
8 20201 South Normandie Avenue; the Kenwood Drain; the Torrance
9 Lateral; the Dominguez Channel (from Laguna Dominguez to the
10 Consolidated Slip); the portion of the Los Angeles Harbor known as
11 the Consolidated Slip from the mouth of the Dominguez Channel south
12 to, but not including or proceeding beyond, Pier 200B and Pier
13 200Y; the LACSD's J.O. "D" sewer from manholes D33 to D5
14 (approximately Francisco Street to 234th Street); the District 5
15 Interceptor sewer from manholes A475 to A442 (approximately
16 Francisco Street to Sepulveda Boulevard); the real property on
17 which the sewer rights-of-way are located for those portions of the
18 District 5 Interceptor and J.O. "D" sewer identified above; the
19 real property burdened by the adjacent railroad right-of-way for
20 those portions of the District 5 Interceptor and J.O. "D" sewer
21 identified above; the "Montrose CERCLA Removal Site" as defined in
22 EPA Region IX's Unilateral Administrative Order 95-18, Findings of
23 Fact at § 3, ¶ 2, dated June 7, 1995; those areas of the Palos
24 Verdes shelf where effluent-affected DDT- and/or PCB-contaminated
25 sediments have come to be located, respectively; and any other
26 areas that EPA determines to be part of the EPA Montrose NPL Site
27 investigation; except that the Montrose NPL Site shall not include,
28 for purposes of this Amended Decree, the following locations:

1 (1) any other location or area designated as a hazardous
2 substance release site pursuant to the California Hazardous
3 Substance Account Act, California Health and Safety Code
4 §§ 25300 et seq., or which is the subject of a cleanup or
5 abatement order pursuant to the Porter-Cologne Water
6 Quality Control Act, California Water Code §§ 13000, et
7 seq., other than the area defined herein as the Montrose
8 NPL Site, at which one or more hazardous substances
9 released from the Montrose DDT Plant Property or from the
10 plant(s) once operated there have come to be located;
11 (2) any other location or area listed on, proposed for or
12 added by EPA to, the National Priorities List (currently
13 found at 40 C.F.R. Part 300, Appendix B), other than the
14 area defined herein as the Montrose NPL Site, at which
15 one or more hazardous substances released from the
16 Montrose DDT Plant Property or from the plant(s) once
17 operated there have come to be located; and
18 (3) the proposed Del Amo NPL Site as it may be defined by
19 EPA.

20 J. "Montrose NRD Area" shall mean for purposes of this
21 Amended Decree the area defined in the 1993 Decree as the Montrose
22 NRD Site and shall mean the area in and around the Channel Islands,
23 the Palos Verdes shelf, the San Pedro Channel including Santa
24 Catalina Island, and the Los Angeles and Long Beach Harbors as
25 described in the Complaint and as described in the draft Damage
26 Assessment Plan and draft Injury Determination Plan published by
27 the Trustees on February 6, 1990 and March 8, 1991, respectively.

28 K "Parties" shall mean each of the signatories to this

1 Amended Decree.

2 L. "Natural Resource Damages" shall mean damages, including
3 loss of use, restoration costs, resource replacement costs or
4 equivalent resource values, and Damage Assessment Costs, and
5 response costs incurred by the Trustees, with respect to injury to,
6 destruction of, or loss of any and all natural resources in and
7 around the Montrose NPL Site and the Montrose NRD Area.

8 M. "Response Costs" shall mean for purposes of this Amended
9 Decree all costs of response as provided in Section 107(a)(1-4)(A)
10 of CERCLA, 42 U.S.C. § 9607(a)(1-4)(A), and as defined in Section
11 101(25) of CERCLA, 42 U.S.C. § 9601(25), that the United States or
12 the State have incurred or will incur with respect to the Montrose
13 NPL Site.

14 NATURAL RESOURCE CLAIM PAYMENTS

15 7. The Settling Local Governmental Entities shall pay to the
16 Trustees a total sum of \$23,700,000 plus all interest accrued on
17 all funds deposited in the escrow account (the "Escrow")
18 established in accordance with Paragraph 8.A of the 1993 Decree
19 (the "Settlement Amount") for the promises and undertakings of the
20 Trustees herein, with the Settling Local Governmental Entities
21 jointly and severally responsible for this obligation except as
22 hereinafter provided in Paragraphs 8 through 10. The Settlement
23 Amount shall be paid by the disbursement of funds paid into the
24 Escrow established in accordance with Paragraph 8.A of the 1993
25 Decree, and maintained under Paragraph 8.A of this Amended Decree.
26 The provisions of this Amended Decree are not intended to and shall
27 not be interpreted to restrict the ultimate authority and
28 discretion of the Trustees to determine the use of settlement funds

1 received for Natural Resource Damages in accordance with the
2 provisions of CERCLA and regulations issued thereunder. Nor are
3 the provisions of this Amended Decree intended to restrict the
4 right of the Settling Local Governmental Entities to allocate
5 responsibility for payment of the Settlement Amount by agreement
6 among themselves, provided that no such allocation is binding on
7 the Trustees.

8 8. A. The Category I entities shall continue to maintain the
9 Escrow established for the deposit of payments by the Category I
10 and Category II entities pursuant to the 1993 Decree, with said
11 Escrow bearing interest on commercially reasonable terms, in a
12 federally-chartered bank with an office in the State of California.
13 The Category I entities shall bear all costs of maintaining the
14 Escrow. The Category I entities shall notify the Trustees in
15 writing of any payments to or disbursements from the Escrow and
16 provide on request all documentation concerning the account,
17 including any agreements concerning the determination of interest
18 rates.

19 B. Subject only to the provisions of Paragraph 8.C, the
20 obligations of the Category I entities and of the Category II
21 entities establishing and maintaining the Escrow as specified in
22 the 1993 Decree are contractual obligations to the Trustees under
23 the 1993 Decree, and shall remain contractual obligations
24 enforceable under the terms and conditions of this Amended Decree
25 effective as of the Date of Execution of this Amended Decree, and
26 those obligations shall be enforceable as a matter of contract law
27 until such time as this Amended Decree is finally entered by the
28 Court. The consideration for these contractual undertakings by the

1 Category I entities and by the Category II entities includes the
2 immediate cessation of litigation activities by the Trustees
3 against those entities until a determination is made by the
4 District Court as to the entry of this Amended Decree.

5 C. All settlement funds paid into the Escrow shall remain in
6 the Escrow and may not be withdrawn except to make the payment
7 required by Paragraph 9.A of this Amended Decree or as specified in
8 Paragraph 14.F of this Amended Decree or unless a final judicial
9 determination is made that entry of this Amended Decree will not be
10 approved, and one of the Parties to this Amended Decree exercises
11 its option pursuant to Paragraph 29 to void the agreement. If that
12 latter event occurs, all sums paid into the Escrow and all accrued
13 interest shall be returned to the Category I entities and to the
14 appropriate Category II entities.

15 9. Within ten (10) working days after the Date of Final
16 Approval of this Amended Decree, the amount of \$23,700,000,
17 together with all interest that has accrued on all settlement funds
18 in the Escrow since the Date of Execution of the 1993 Decree, and
19 except as otherwise provided in Paragraph 14.B, shall be paid to
20 the Trustees, payment to be made as follows:

21 A. The Category I entities, for themselves and the Category
22 II entities, shall cause that amount to be paid from the Escrow
23 into the Registry of the Court, United States District Court for
24 the Central District of California, to be administered by the
25 Registry of the Court for the Trustees. This payment shall be made
26 in the manner specified in Paragraph 9.B below, and the amount so
27 paid and any interest thereon shall be administered and disbursed
28 as provided in Paragraphs 9.C and 9.D below.

1 B. The payment described in Paragraph 9.A shall be made by
2 certified or bank check or warrant payable to the "Clerk, United
3 States District Court." The check or warrant shall include on its
4 face a statement that it is a payment in Civil Action No. CV 90-
5 3122 AAH (JRx) (C.D. Cal.), and shall be sent to:

6 Office of the Clerk
7 United States District Court for
8 the Central District of California
 312 North Spring Street
 Los Angeles, CA 90012.

9 The Category I entities, as Escrow holder, shall cause copies of
10 the check or warrant and of any transmittal letter accompanying the
11 check or warrant to be sent to the Trustees as provided in
12 Paragraph 37 of this Amended Decree.

13 C. The Registry of the Court shall administer all amounts
14 paid under Paragraph 9.A in an interest bearing joint account
15 ("Registry Account") as provided in the Order Directing the Deposit
16 of Settlement Amount into the Registry of the Court ("Deposit
17 Order") issued by the District Court pursuant to Rule 67 of the
18 Federal Rules of Civil Procedure, 28 U.S.C. § 2041, and Local Rule
19 22 of the Local Rules for the Central District of California. The
20 Deposit Order shall be attached to this Amended Decree and shall be
21 entered by the District Court at the time of entry of this Amended
22 Decree.

23 D. All settlement funds and all interest accrued thereon in
24 the Registry Account shall be held in the name of the "Clerk,
25 United States District Court," for the benefit of the Trustees.
26 All disbursements from the Registry Account shall be made to the
27 Trustees by order of the Court in accordance with the provisions of
28 28 U.S.C. § 2042 and the Local Rules for the Central District of

1 California.

2 10. A. For purposes of this Amended Decree, and without any
3 admission by LACSD, the Parties acknowledge that LACSD has a
4 special interest in the elimination or control of hazardous
5 substance contamination in the marine sediments underlying the
6 waters in and around the White's Point Outfall. For purposes of
7 this Amended Decree, and without any admission by the City of Los
8 Angeles and the City of Long Beach, the Parties likewise
9 acknowledge that the City of Los Angeles and the City of Long Beach
10 have a special interest in the elimination or control of hazardous
11 substance contamination in the Los Angeles-Long Beach Harbors. In
12 recognition of the special interest of LACSD, Los Angeles County
13 and the Cities of Los Angeles and Long Beach, respectively, the
14 Trustees agree that representatives of those entities may
15 participate on an advisory panel to the Trustees in the development
16 of the final restoration plan (if, and when, a final restoration
17 plan is developed), and in that role shall have reasonable
18 opportunity to provide input to the Trustees regarding that plan.
19 The Trustees shall nonetheless have the ultimate responsibility and
20 authority for the adoption, development and implementation of any
21 restoration plan. The Trustees' agreement to the creation of this
22 advisory panel shall not be interpreted to require consultation
23 with that panel regarding development of factual information or
24 legal positions with respect to the conduct of the damage
25 assessment or the litigation of this case or that the panel will
26 have the right to vote on any plan proposals.

27 COVENANTS NOT TO SUE FOR NATURAL RESOURCE DAMAGES

28 11. Except as specifically provided in Paragraphs 12 and 13

1 of this Amended Decree, the United States, and the State, and
2 agencies or instrumentalities thereof, each hereby covenants not to
3 sue or to take any other civil or administrative action against any
4 of the Settling Local Governmental Entities for any and all civil
5 or administrative liability to the United States, the State, and
6 agencies or instrumentalities thereof, for Natural Resource Damages
7 under CERCLA, 42 U.S.C. §§ 9601 et seq., or under any other
8 federal, state or common law. The foregoing covenants not to sue
9 represent a restatement of the covenants currently in effect
10 pursuant to Paragraph 14 of the 1993 Decree. The 1993 Decree
11 covenants shall remain in effect until the Date of Initial Approval
12 of this Amended Decree. Upon the Date of Initial Approval of this
13 Amended Decree, the 1993 Decree covenants shall no longer be in
14 effect and shall be superseded by the covenants set forth in this
15 Paragraph, which shall remain in effect so long as the Settling
16 Local Governmental Entities are fulfilling their obligations under
17 this Amended Decree, and subject to the Parties' rights to void
18 this Amended Decree pursuant to Paragraph 29. The United States,
19 and the State, and agencies or instrumentalities thereof, further
20 agree that since the Category II entities have paid the entire sum
21 required to be paid by them into the Escrow in accordance with
22 Paragraph 8.B of the 1993 Decree all their obligations hereunder
23 with respect to claims for Natural Resource Damages, except as
24 provided in Paragraph 41 of this Amended Decree, have been
25 completely fulfilled, with the Category I entities continuing to be
26 obligated under all provisions of this Amended Decree regarding
27 Natural Resource Damages.

28

1 RESERVATION OF RIGHTS FOR NATURAL RESOURCE DAMAGES

2 12. A. Notwithstanding any other provision of this Amended
3 Decree, the Trustees reserve the right to institute proceedings
4 against any Settling Local Governmental Entity in this action or in
5 a new action seeking recovery of Natural Resource Damages, as
6 defined herein, based on (1) conditions unknown to the Trustees on
7 the Date of Execution of this Amended Decree that contribute to
8 injury to, destruction of, or loss of natural resources ("Unknown
9 Conditions"); or (2) information received by the Trustees after the
10 Date of Execution of this Amended Decree which indicates there is
11 injury to, destruction of, or loss of natural resources, of a type
12 unknown to the Trustees as of the Date of Execution of this Amended
13 Decree ("New Information").

14 B. An increase solely in the Trustees' assessment of the
15 magnitude of the injury, destruction or loss to natural resources,
16 or in the estimated or actual Natural Resource Damages shall not be
17 considered to be Unknown Conditions or New Information within the
18 meaning of Paragraph 12.A (1) or (2), nor shall a determination by
19 the Trustees that a previously identified natural resource injury
20 was caused by that party's release of a hazardous substance,
21 including hazardous substances other than PCBs or DDT, be
22 considered New Information or Unknown Conditions.

23 C. The Settling Local Governmental Entities reserve their
24 right to contest any proceeding allowed by Paragraphs 12.A and 13
25 of this Amended Decree, and do not by consenting to this Amended
26 Decree waive any defenses, except to the extent specified in
27 Paragraph 20.C of this Amended Decree. In the event that the
28 Trustees institute proceedings under Paragraph 12.A of this Amended

1 Decree, the Settling Local Governmental Entities reserve the right
2 to assert potential cross-claims, counterclaims or third party
3 claims against the United States or the State, or any employee,
4 officer, agency or instrumentality thereof, relating solely to such
5 claims asserted by the Trustees pursuant to Paragraph 12.A.
6 Nothing in this Amended Decree shall be deemed to constitute
7 preauthorization of a claim within the meaning of Section 111 of
8 CERCLA, 42 U.S.C. § 9611.

9 D. In addition to defenses that may be asserted by the
10 Settling Local Governmental Entities pursuant to Paragraph 12.C
11 above, and a defense that a future release of hazardous substances
12 now present in the sediments of the Palos Verdes shelf was the
13 result of conditions or information known to the Trustees on the
14 Date of Execution of this Amended Decree, the Settling Local
15 Governmental Entities will not be liable for Natural Resource
16 Damages arising from a future release of hazardous substances now
17 present in the sediments of the Palos Verdes shelf, to the extent
18 that it is established that the release, the injury to natural
19 resources, and the Natural Resource Damages, resulted from LACSD's
20 institution of full secondary treatment of wastewater flows through
21 the White's Point Outfall.

22 13. Notwithstanding any other provision of this Amended
23 Decree, the covenants not to sue in Paragraph 11 shall apply only
24 to matters addressed in Paragraph 11 and specifically shall not
25 apply to the following claims:

26 A. claims based on a failure by the Settling Local
27 Governmental Entities to satisfy the requirements of this Amended
28 Decree;

1 B. claims for criminal liability;

2 C. claims for violations of any other federal, state or
3 local law or permit, including but not limited to violations of the
4 Clean Water Act, 33 U.S.C. §§ 1311, et seq., and any National
5 Pollutant Discharge Elimination System ("NPDES") permit issued
6 thereunder, and the Porter-Cologne Water Quality Control Act,
7 California Water Code §§ 13000, et seq.; and

8 D. claims arising from the past, present, or future
9 disposal, release or threat of release of hazardous substances that
10 do not involve the Montrose NPL Site and/or the Montrose NRD Area.

11 PAYMENTS WITH RESPECT TO RESPONSE ACTIVITIES

12 14. A. The Settling Local Governmental Entities shall pay
13 to the United States and the State a total sum of \$22,000,000 (the
14 "Montrose NPL Site Response Cost Settlement Amount"). The Montrose
15 NPL Site Response Cost Settlement Amount shall be paid through
16 monetary payments in accordance with the terms of Paragraphs 14.B
17 through 14.G below.

18 B. The Settling Local Governmental Entities, through the
19 City of Los Angeles as their agent, shall continue to maintain the
20 escrow account ("Response Costs Escrow") established by those
21 Parties pursuant to the 1993 Decree, including all settlement funds
22 that have been deposited therein, to wit, \$3,500,000, and any
23 interest that has accrued thereon since the date of deposit with
24 said Response Costs Escrow continuing to bear interest on
25 commercially reasonable terms, in a federally-chartered bank with
26 an office in the State of California. The Settling Local
27 Governmental Entities shall pay into the Response Costs Escrow
28 those additional amounts set forth below on the dates indicated

1 below:

2 January 15, 1997: \$5,900,000.00

3 In addition, within ten (10) working days after the Date of Initial
4 Approval of this Amended Decree, the amount of \$12,600,000,
5 together with all interest that has accrued on that amount since
6 the Date of Execution of this Amended Decree in the Escrow
7 maintained pursuant to Paragraph 8.A of this Amended Decree, shall
8 be paid into the Response Costs Escrow.

9 C. The Settling Local Governmental Entities shall bear all
10 costs of establishing the Response Costs Escrow. The City of Los
11 Angeles, acting as agent for the Settling Local Governmental
12 Entities, shall notify EPA and the State immediately after the
13 above payments have been made, and will provide on request all
14 documentation concerning the account, including any agreement
15 concerning the determination of interest rates.

16 D. Subject only to the provisions of Paragraph 14.E, the
17 obligations of the Settling Local Governmental Entities to continue
18 to maintain the Response Costs Escrow and to pay the amounts
19 specified above into the Response Costs Escrow within the specified
20 times are contractual obligations to the United States and the
21 State, effective as of the Date of Execution of this Amended
22 Decree, and those obligations shall be enforceable as a matter of
23 contract law regardless of when or whether this Amended Decree is
24 finally entered by the Court. The consideration for these
25 contractual undertakings by the Settling Local Governmental
26 Entities includes the immediate cessation of litigation activities
27 by the United States and the State against the Settling Local
28 Governmental Entities until a determination is made by the District

1 Court as to the entry of this Amended Decree.

2 E. All settlement funds paid into the Response Costs Escrow
3 shall remain in the Response Costs Escrow and may not be withdrawn
4 except to make the payments required by Paragraphs 14.F and 14.G of
5 this Amended Decree or unless a final judicial determination is
6 made that entry of this Amended Decree shall not be approved, and
7 one of the Parties to this Amended Decree exercises its option
8 pursuant to Paragraph 29 to void the agreement. If that latter
9 event occurs, all sums paid into the Response Costs Escrow and all
10 accrued interest shall be returned to the Settling Local
11 Governmental Entities.

12 F. Within ten (10) working days after the Date of Final
13 Approval of this Amended Decree, the Settling Local Governmental
14 Entities shall pay to the State from the Response Costs Escrow the
15 sum of \$140,000, together with a pro rata share of all interest
16 that has accrued on that amount since the Date of Execution of this
17 Amended Decree. The payment to the State shall be made by
18 certified check made payable to "Cashier, California Department of
19 Toxic Substances Control," and shall bear on its face this case
20 name and number. Payment shall be mailed to:

21 Department of Toxic Substances Control
22 Accounting/Cashier
23 400 P Street, 4th Floor
P.O. Box 806
Sacramento, CA 95812-0806

24 Notice of said payment shall be given to the State as provided in
25 Paragraph 37 of this Amended Decree.

26 G. The payment to the United States shall be in the sum of
27 \$21,860,000, together with a pro rata share of all interest that
28 has accrued on this amount as specified in this Paragraph 14.G.

1 Within ten (10) working days after the Date of Final Approval of
2 this Amended Decree, the Settling Local Governmental Entities shall
3 make payments to the United States from the Response Costs Escrow
4 as follows: 1) \$2,500,000, together with all interest that has
5 accrued on the \$3,500,000 deposited in the Response Costs Escrow
6 established pursuant to Paragraph 17 of the 1993 Decree, to the
7 "United States Environmental Protection Agency, Montrose Chemical
8 National Priorities List Superfund Site Special Account", 2)
9 \$1,000,000 for past response costs incurred by EPA with respect to
10 the Montrose NPL Site for deposit by EPA in the Hazardous Substance
11 Superfund, and 3) \$3,500,000, together with a pro rata share of
12 interest that has accrued since ten (10) working days after the
13 Date of Initial Approval of this Amended Decree, to the "United
14 States Environmental Protection Agency, Montrose Chemical National
15 Priorities List Superfund Site-Palos Verdes Shelf Operable Unit
16 Special Account".

17 On January 30, 1997, or ten (10) days after the Date of Final
18 Approval of this Amended Decree, whichever is later, the Settling
19 Local Governmental Entities shall pay from the Response Costs
20 Escrow the sum of \$14,860,000, together with all remaining sums
21 that have accrued in the Response Costs Escrow established pursuant
22 to Paragraph 14 of this Amended Decree, to the "United States
23 Environmental Protection Agency, Montrose Chemical National
24 Priorities List Superfund Site-Palos Verdes Shelf Operable Unit
25 Special Account".

26 Payments to the United States shall be made by Electronic
27 Funds Transfer ("EFT" or "wire transfer") in accordance with
28 instructions provided by the United States to the Settling Local

1 Governmental Entities subsequent to the lodging of this Amended
2 Decree. Any EFT received after 11:00 A.M. (Eastern Time) will be
3 credited on the next business day. The Settling Local Governmental
4 Entities shall send notice of the EFT to plaintiffs as provided in
5 Paragraph 37 of this Amended Decree. All payments to the United
6 States under this Paragraph 14.G shall reference the Montrose
7 Chemical Corporation of California Superfund Site, Site # 9T26, DOJ
8 Case # 90-11-3-511, and U.S.A.O. file number 9003085.

9 H. If the United States or the State must bring an action to
10 collect any payment required under this Paragraph 14, the Settling
11 Local Governmental Entities shall reimburse the United States and
12 the State for all costs of such action, including but not limited
13 to attorney's fees.

14 I. EPA commits to expend the settlement funds paid by the
15 Settling Local Governmental Entities to the United States
16 Environmental Protection Agency, Montrose Chemical National
17 Priorities List Superfund Site Special Account on EPA response
18 activities with respect to the Montrose NPL Site, except those
19 areas of the Palos Verdes shelf where effluent-affected DDT- and/or
20 PCB-contaminated sediments have come to be located. All such funds
21 not used in accordance with the provisions of this Paragraph 14.I
22 may be applied to the Hazardous Substance Superfund, but only after
23 the completion of the response activities at the Montrose NPL Site.

24 J. EPA commits to expend the settlement funds paid by the
25 Settling Local Governmental Entities to the United States
26 Environmental Protection Agency, Montrose Chemical National
27 Priorities List Superfund Site - Palos Verdes Shelf Operable Unit
28 Special Account for response activities with respect to the

1 Montrose NPL Site Palos Verdes Shelf Operable Unit. All such funds
2 not used in accordance with the provisions of this Paragraph 14.J
3 may be deposited in the Hazardous Substance Superfund but only
4 after completion of the EPA response activities.

5 IN-KIND SERVICES

6 15. A. LACSD agrees to provide in-kind services to EPA in
7 lieu of the cash payments required by Paragraph 14 of this Amended
8 Decree in settlement of the response cost claims of the United
9 States and the State, subject to the conditions set forth in
10 Paragraphs 15.B and 15.C below. Such services shall be valued by
11 mutual agreement of EPA and LACSD. Costs of in-kind services
12 provided by LACSD through contractors shall be approved by EPA,
13 with the concurrence of DTSC , prior to implementation of the
14 contract.

15 B. In the event that LACSD provides in-kind services
16 pursuant to this Amended Decree, such services shall be provided by
17 LACSD as a contractor retained by the EPA and shall total in value
18 not more than \$2,000,000, the services to be valued at the time
19 rendered. EPA shall not request that LACSD provide more than
20 \$1,000,000, in services in any twelve month period after the Date
21 of Initial Approval of this Amended Decree. However, EPA and
22 LACSD, by written agreement, may modify the annual limits
23 established above, or extend the period for provision of services,
24 including provision for long term monitoring projects.

25 C. In requesting the provision of in-kind services pursuant
26 to Paragraph 15.A of this Amended Decree, EPA shall make work
27 assignments to LACSD in writing and shall set forth the scope and
28 specifications of the work required and the date by which LACSD

1 and/or the approved contractors will deliver the work product of
2 the particular assignment. In making assignments, EPA will consult
3 with LACSD, and LACSD can propose modifications to the work
4 assignments. EPA may specify that all or a portion of a particular
5 assignment is to be performed by a contractor, by LACSD or by
6 identified LACSD staff members; provided that, to the extent
7 practicable, the EPA shall accommodate LACSD's reasonable requests
8 regarding the availability of its personnel. All services provided
9 under this Amended Decree by LACSD shall be subject to full
10 oversight and control by EPA. EPA shall have full access to all
11 work in progress required under this agreement, whether by LACSD
12 personnel or by contractors. LACSD shall submit quarterly
13 statements to EPA itemizing the cost of services provided during
14 the preceding quarter, and cumulatively from the Date of Initial
15 Approval of this Amended Decree.

16 16. For purposes of this Amended Decree, and without any
17 admission by LACSD, the Parties acknowledge that LACSD has a
18 special interest in the elimination or control of hazardous
19 substance contamination in the marine sediments underlying the
20 waters in and around the Palos Verdes shelf. For purposes of this
21 Amended Decree, and without any admission by the City of Los
22 Angeles and the City of Long Beach, the Parties acknowledge that
23 the City of Los Angeles and the City of Long Beach have a special
24 interest in the elimination or control of hazardous substance
25 contamination in the Los Angeles-Long Beach area. Plaintiffs
26 maintain that the hazardous substance contamination in the
27 sediments of the Palos Verdes shelf and the Los Angeles-Long Beach
28 Harbors has resulted in substantial injury to resources held in

1 trust by the Trustees and that the elimination or control of the
2 contamination in these sediments would facilitate the recovery of
3 the injured resources. Plaintiffs further maintain that the
4 release or threatened release of these same contaminated sediments
5 may present a significant threat to human health or the
6 environment, and that the reduction or elimination of these threats
7 from the contaminated sediments would provide substantial benefit
8 to the public health, welfare and the environment. EPA is
9 undertaking the investigations required under CERCLA and the NCP to
10 select response activities for the contaminated effluent-affected
11 deposit on the Palos Verdes shelf. EPA, in consultation with DTSC,
12 may determine that one or more activities are necessary or may
13 determine that no action is appropriate. The Settling Local
14 Governmental Entities acknowledge that one of the response
15 activities EPA might undertake with respect to significantly
16 reducing or eliminating the threat presented by the contaminated
17 sediments is to isolate all or a portion of the contaminated
18 sediments on the Palos Verdes shelf thereby significantly reducing
19 or eliminating human exposure to and ecological impact from such
20 contaminants. To the extent that EPA might decide to choose a
21 response activity that isolates the contaminated sediments, the
22 Settling Local Governmental Entities further acknowledge that a
23 possible ready source of clean sediment suitable for isolating the
24 contaminated sediment on the Palos Verdes shelf may be found in the
25 Los Angeles-Long Beach Harbors. To the extent it is consistent
26 with the obligations and responsibilities of EPA under the
27 provisions of CERCLA and the applicable regulations governing use
28 of recoveries, EPA commits to the expenditure of at least

1 \$13,900,000 on the Palos Verdes shelf and at least \$5,000,000 with
2 respect to activities affecting the Los Angeles-Long Beach Harbors.
3 EPA further commits to expend these settlement funds on
4 investigation, design and implementation activities for response
5 activities that involve the elimination or control of contaminated
6 sediments with respect to the Palos Verdes shelf. If EPA, in
7 consultation with DTSC, in applying the provisions of CERCLA and
8 applicable regulations and examining the scientific and engineering
9 objectives of remediation of the Palos Verdes shelf contaminated
10 sediments, and taking into account the available settlement funds,
11 determines to expend settlement funds in a manner different than
12 described in this Paragraph, EPA will provide an explanation of its
13 decision to representatives of LACSD, the City of Los Angeles, and
14 the City of Long Beach. However, the provisions of this Paragraph
15 with respect to the use of settlement funds are not intended to and
16 do not make EPA's decisions with respect to any response activity
17 reviewable in any judicial or administrative proceeding.

18 COVENANT NOT TO SUE FOR MONTROSE NPL SITE RESPONSE

19 ACTIVITIES AND

20 COSTS AND RESERVATION OF RIGHTS

21 17. Except as specifically provided in Paragraphs 18 and 19
22 of this Amended Decree, the United States, the State, and agencies
23 and instrumentalities thereof, each hereby covenants not to sue or
24 take administrative action against any of the Settling Local
25 Governmental Entities, to compel response activities or to recover
26 Response Costs incurred or to be incurred in the future in
27 connection with the Montrose NPL Site including, but not limited
28 to, costs for studies and evaluations of the area covered by

1 response activities under CERCLA Sections 106 and 107, 42 U.S.C.
2 §§ 9606 and 9607, or pursuant to the California Hazardous Substance
3 Account Act, California Health and Safety Code §§ 25300 et seq., or
4 any other state statute or state common law. In addition, the
5 United States, the State, and agencies and instrumentalities
6 thereof, each hereby covenants not to sue or take administrative
7 action against any of the Settling Local Governmental Entities, to
8 compel response activities or to recover Response Costs incurred or
9 to be incurred in the future in connection with the Montrose NPL
10 Site under the Resource Conservation and Recovery Act ("RCRA")
11 Sections 3008(h), 3013, or 7003, 42 U.S.C. §§ 6928(h), 6934 or
12 6973, or California Health and Safety Code § 25187. The State, and
13 agencies and instrumentalities thereof, further covenants not to
14 sue or take administrative action against any of the Settling Local
15 Governmental Entities, to compel response activities or to recover
16 Response Costs incurred or to be incurred in the future in
17 connection with the Montrose NPL Site under RCRA Section 7002, 42
18 U.S.C. § 6972. The foregoing covenants not to sue include a
19 restatement of the covenants currently in effect pursuant to
20 Paragraph 18 of the 1993 Decree. The 1993 Decree covenants shall
21 remain in effect until the Date of Initial Approval of this Amended
22 Decree. Upon the Date of Initial Approval of this Amended Decree,
23 the 1993 Decree covenants shall no longer be in effect and shall be
24 superseded by the covenants set forth in this Paragraph which shall
25 remain in effect so long as the Settling Local Governmental
26 Entities are fulfilling their obligations under this Amended
27 Decree, subject to the Parties' rights to void this Amended Decree
28 pursuant to Paragraph 29 of this Amended Decree. The United